

EXCEPTION
OPEN MEETING AGENDA ITEM



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS OCT -8 P 4: 24
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Arizona Corporation Commission

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IN THE MATTER OF DISSEMINATION OF
INDIVIDUAL CUSTOMER PROPRIETARY
NETWORK INFORMATION BY TELECOM-
MUNICATIONS CARRIERS

Docket No. RT-00000J-02-0066

**Cox Arizona Telcom's Exceptions
to Staff's Proposed CPNI Rules**

Cox Arizona Telcom, L.L.C. (Cox) submits its exceptions to the recommended order and related proposed Customer Proprietary Network Information (CPNI) rules docketed September 24, 2004. Although the proposed rules incorporate some minor changes in response to comments provided by interested parties in connection with the September 2, 2004 workshop, the proposed rules as written are legally flawed. The record in this docket does not suggest that the current federal CPNI rules (47 C.F.R. §§64.2001-2009 (adopted September 20, 2002)) are inadequate to protect CPNI of Arizona consumers. Nor does the record support the need for the proposed CPNI rules. Cox urges the Commission not to adopt additional CPNI rules until it is clear that the federal CPNI rules are inadequate.

A. The Federal CPNI Rules Adequately Protect CPNI.

Cox submits that the current FCC CPNI rules provide adequate and appropriate protection for CPNI. In following the requirements set forth in the federal rules, Cox is unaware of any of its customers having expressed displeasure with Cox's handling of CPNI, including the notice that is sent to Cox customers.

Moreover, reliance on the federal CPNI rules ensures consistency across the multiple states and jurisdictions that many telecommunications providers operate. Deviating from the federal CPNI rules requires telecommunications providers to expend additional funds and resources to ensure compliance with at least two sets of rules across the different jurisdictions wherein they operate. The costs associated with implementing and enforcing two distinct sets of CPNI rules can ultimately result in higher costs to consumers as carriers attempt to recover the cost of these additional requirements. Such deviation also creates quality control challenges due to the need to address different CPNI requirements in different states.

The sole instance cited by Staff in its Memorandum concerning inadequate CPNI protection involves an opt-out procedure used by Qwest in the fall of 2001. Cox submits that the procedure used by Qwest in that instance would not necessarily comport with the current federal CPNI rules. The Memorandum is silent on whether adherence to the current federal CPNI rules would have avoided the CPNI concerns raised in connection with Qwest's 2001 procedure. Given the lack of evidence of CPNI misuse since that time, the federal CPNI rules appear to be sufficient to provide notice to consumers concerning the use of CPNI and to properly protect CPNI. There is no need for Arizona-specific CPNI rules at this time.¹

B. The Proposed Rules Face Constitutional Challenges.

The proposed rules contain a requirement to obtain affirmative verification from a customer of that customer's opt-out approval to use CPNI within a prescribed timeframe. Specifically, Rule 2108 requires that carriers must verify a customer's opt-out choice within one year of sending an opt-out notice. If that affirmative verification is not obtained within one year, carriers are no longer authorized to use, disclose, or permit access to that customer's CPNI. In effect, the rules propose a "delayed" opt-in methodology, not a true opt-out methodology. Cox

¹ If the Commission concludes that Arizona-specific CPNI rules should be proposed, Cox requests that the Commission amend the rules proposed by Staff by deleting Rules 2108, 2109 and 2110. Such amendment would reduce potential constitutional challenges to the rules, yet at the same time preserve enhanced notice requirements that would eliminate problems similar to those that arose with Qwest's 2001 procedure.

1 submits the "delayed" opt-in methodology will be confusing to consumers and even more
2 burdensome to carriers than a simple opt-in methodology. As a result, Cox continues to believe
3 that the proposed rules are subject to challenge on a similar basis as set forth in *US West. FCC*,
4 182 F.3d. 1224 (10th Cir. 1999) and *Verizon Northwest, Inc. v. Showalter*, 282 F.Supp. 2d 1187
5 (W.D. Wash. 2003), because they effectively eliminate a true opt-out procedure.

6 **C. Conclusion**

7 Arizona consumers are afforded substantial and meaningful protection for their CPNI
8 through the existing FCC CPNI rules which were developed and refined over several years and
9 which have successfully provided protection for consumers nationally. The record is devoid of
10 any need to adopt Arizona-specific CPNI rules to remedy existing CPNI problems not addressed
11 by the federal CPNI rules. Moreover, adoption of Arizona-specific CPNI rules will only result in
12 additional customer confusion and additional costs to carriers as they attempt to comply with two
13 distinct sets of rules. Cox requests that the Commission refrain from adopting Arizona-specific
14 CPNI rules unless and until the current federal CPNI rules are proven to be inadequate.

15 RESPECTFULLY SUBMITTED October 8th, 2004.

16 COX ARIZONA TELCOM, L.L.C.

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